

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

DYLAN NICHOLAS STONE,

Plaintiff,

v.

CIVIL ACTION NO.: 2:20-CV-527

**RALPH TERRY, SGT. SHAWN RAMSEY,
SGT. NATHAN WITHROW, CO1 CHARLES
JOHNSTON, CO2 HEATHER VEST,
CPL. JAMES TAYLOR, CO2 DUSTIN BELL,
CO2 SKYLER SANTIAGO, CPL. BLANKENSHIP,
SGT. SLACK,**

Defendants

**DEFENDANT SGT. NATHAN WITHROW'S ANSWER
TO PLAINTIFF'S COMPLAINT**

COMES NOW Defendant Sgt. Nathan Withrow, by and through his counsel, William E. Murray, Mark J. McGhee, and the law firm of Anspach Meeks Ellenberger LLP, and for his Answer to the Complaint states as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief may be granted and, therefore, this Defendant moves this matter to be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

SECOND DEFENSE

This Defendant generally denies all allegations in Plaintiff's Complaint regarding the use of excessive force against Plaintiff, and specifically denies the allegations against this Defendant.

THIRD DEFENSE

This Defendant raises and preserves the defenses of immunity and qualified immunity available to him pursuant to the United States Constitution, United States Code, the West Virginia State Constitution and the West Virginia State Code.

FOURTH DEFENSE

All actions undertaken by this Defendant were privileged in the exercise of his duties.

FIFTH DEFENSE

Plaintiff's injuries and damages, if any, were the direct and proximate result of the negligence and conduct of a person or entity other than this Defendant and is in no way attributable to any wrongdoing on the part of this Defendant.

SIXTH DEFENSE

This Defendant acted reasonably and in good faith under the circumstances and is, therefore, immune from liability.

SEVENTH DEFENSE

No custom or policy of this Defendant caused the deprivation of any of the Plaintiff's rights.

EIGHTH DEFENSE

This Defendant asserts and alleges that no right, privilege, or immunity secured to Plaintiff by the Constitution or laws of the United States was abridged or violated by any act or action on behalf of this Defendant and, therefore, the Complaint of Plaintiff must be dismissed with prejudice to him.

NINTH DEFENSE

The Complaint must be dismissed as this Defendant was not deliberately indifferent to any recognized or established civil or constitutional right of Plaintiff.

TENTH DEFENSE

This Defendant raises the affirmative defenses of immunity, statute of limitations, contributory and/or comparative negligence, estoppel and laches.

ELEVENTH DEFENSE

This Defendant denies that he acted in violation of Plaintiff's constitutional rights and further denies that he acted willfully, intentionally or in callous disregard of Plaintiff's constitutional and statutory rights, or that he in any way denied Plaintiff due process of law.

TWELFTH DEFENSE

This Defendant has, at all times, acted within his legal rights in the conduct of all of his activities, and with just cause.

THIRTEENTH DEFENSE

This Defendant hereby raises and preserves each and every defense set forth in Rules 8, 9, and 12 of the Federal Rules of Civil Procedure and further reserves the right to raise such additional defenses as may appear appropriate following further discovery and factual development in this case.

FOURTEENTH DEFENSE

This Defendant asserts the affirmative defenses of release, accord and satisfaction and collateral estoppel.

FIFTEENTH DEFENSE

Plaintiff has no cause of action for alleged punitive damages because punitive damages are an inappropriate remedy under the facts and circumstances of this case and Plaintiff's cause of action for punitive damages must fail for lack of sufficient allegations. Also, such claims are barred by the West Virginia Code and the West Virginia Constitution.

SIXTEENTH DEFENSE

This Defendant asserts any and all defenses available to him pursuant to the West Virginia Prisoner Litigation Reform Act, W.Va. Code §25-1A-1, *et seq.*, and the Federal Prison Litigation Reform Act, 42 U.S.C. §1997e.

SEVENTEENTH DEFENSE

This Defendant asserts and reserves any and all cross-claims he may have against any other Defendants in this matter for contribution and/or indemnification.

EIGHTEENTH DEFENSE

This Defendant asserts that Plaintiff cannot recover because the alleged injuries are *de minimis*.

NINETEENTH DEFENSE

Plaintiff's Complaint, to the extent that it seeks punitive or exemplary damages, violates Defendant's rights to protection from "excessive fines" as provided in the Eighth Amendment of the Constitution of the United States of America, and Article 1, Section 1 and Article 3, Section 5 of the Constitution of the State of West Virginia, and violates Defendant's rights to substantive due process as provided in the Fourth and Fifth Amendments of the Constitution of United States of America and the Constitution of the State of West Virginia and, therefore, fails to state a cause of action supporting the punitive or exemplary damages claimed.

TWENTIETH DEFENSE

This Defendant asserts that the alleged injuries and damages, if any, sustained by Plaintiff were the result of acts or omissions of other individuals and that this Defendant is completely without fault in this matter.

TWENTY-FIRST DEFENSE

The injuries, if any, of which Plaintiff complains were caused by the misconduct of

Plaintiff and/or the acts of others over whom this Defendant had no control.

TWENTY-SECOND DEFENSE

This Defendant asserts and reserves any and all affirmative defenses related to the doctrine of qualified immunity from state negligence claims.

TWENTY-THIRD DEFENSE

This Defendant asserts and preserves the affirmative defenses of absolute, qualified immunity and official immunity. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *State v. Chase Securities, Inc.*, 424 S.E.2d 591, 595 (W.Va. 1992); and *Clark v. Dunn*, 465 S.E.2d 374 (W.Va. 1995).

WHEREFORE, having fully responded to the allegations contained in Plaintiff's Complaint, your Defendant hereby respectfully requests that this Honorable Court dismiss Plaintiff's Complaint, with prejudice, and award him the reasonable and appropriate attorney's fees and costs incurred in the defense of this matter, together with any such further relief deemed appropriate by this Honorable Court.

DEFENDANT DEMANDS A JURY TRIAL.

DEFENDANT SGT. NATHAN WITHROW

By Counsel,

/s/ William E. Murray

William E. Murray, Esq. (WVSB #2693)

Mark J. McGhee, Esq. (WVSB #9016)

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of November, 2020, I electronically filed the
“DEFENDANT SGT. NATHAN WITHROW’S ANSWER TO PLAINTIFF’S
COMPLAINT” with the Clerk of the Court using the CM/ECF system and served a copy of the
same upon Dylan Stone, a pro se, non-CM/ECF participant, by First Class mail at his last known
address of:

Dylan Nicholas Stone #3558737
St. Mary’s Correctional Center
2880 N. Pleasant Hwy.
St. Mary’s, WV 26170

/s/ William E. Murray

William E. Murray (WVSB #2693)
Mark J. McGhee (WVSB #9016)
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